

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.REV.P. 687/2012**

Date of Reserve: 22.09.2015

Date of decision: 30.09.2015

**CENTRAL BUREAU OF INVESTIGATION**

..... Petitioner

Through: Ms.Rajdipa Behura, SPP for  
CBI.

versus

**SEA SHELL MARKETING PVT. LTD. & ANR.**

..... Respondents

Through: Mr.Satish Tamta, Advocate for  
respondent No.2.

**CORAM:**  
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ASHUTOSH KUMAR , J.**

1. A writ petition vide W.P.(C) 4582/2003 was filed by Kalyan Sansthan Social Welfare Organization before the Delhi High Court seeking action against defaulting engineers and officials of Municipal Corporation of Delhi (for short 'MCD') and for probing their nexus with the hierarchy in the engineering department, builders and the political functionaries.

2. Pursuant to the directions issued by the High Court in the aforesaid petition, a preliminary inquiry was held and pursuant to such preliminary inquiry (PE No.1/06/EOW-IV) a regular case RC No.

RCSI8 2006 E 0009 was registered under Section 120-B of the Indian Penal Code (for short 'IPC') read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC Act') against five accused persons: three functionaries of the MCD and the other two who are the respondents in the present petition viz. M/s Sea Shell Marketing Private Ltd. and its Managing Director Ved Prakash Chaudhary. The aforesaid FIR was lodged on the basis of a written complaint by the DSP, CBI, alleging that in the year 2003-04, the engineers of the MCD abused their official position and thereby caused undue pecuniary gain to a private builder M/s Sea Shell Marketing Private Ltd. (respondent no.1) while dealing with an unauthorized construction of a commercial complex at Khasra No.218, Sultanpur Village, Main M.G. Road, Mehrauli, Delhi. During the aforesaid period, an illegal construction of a commercial complex was noticed by the MCD on the plot referred to above. A demolition order was passed and subsequently sealing orders were issued by the Zonal Deputy Commissioner in the month of December, 2003. Despite the processes having been initiated for demolition, deliberately no action was taken by the employees of MCD for the purpose of delaying and prolonging the issue. Because of such lackadaisical approach, the illegal construction of the building continued and the construction level reached till the 3<sup>rd</sup> floor. Despite a serious view having been taken by the MCD, no action was taken by the three named accused persons in the FIR who are the engineers of MCD, facilitating the completion of building and the same being let

out on rent/lease to various commercial establishments. This caused unlawful gain to the respondents and other accused persons.

3. After investigation, CBI submitted chargesheet on 14.12.2007 in which Ashok Kumar Gupta (Executive Engineer), Anil Kumar (Assistant Engineer) and Pawan Kumar Jain (Junior Engineer) and respondent no.1, M/s Sea Shell Marketing Private Ltd., were sent up for trial. Respondent no.2, Ved Prakash Chaudhary, the managing director of M/s Sea Shell Marketing Private Ltd. was not chargesheeted. The learned Trial Court, differing with the police report in that regard summoned all the accused persons including respondent no.2 for facing trial.

4. The learned Trial Court vide order dated 22.05.2012 passed in CBI Case No.43/2011 discharged all the accused persons including the respondents.

5. The aforesaid order is under challenge by the CBI but only with respect to the respondents who are the private parties and not against other accused persons who are officials (engineers) of the MCD.

6. On perusal of documents relied upon by the prosecution, the learned Trial Court was of the view that no prima facie material/evidence could be collected against the MCD officials for their having entered into any conspiracy with the accused persons for facilitating the delay in demolition of the illegal construction which ultimately led to the illegal construction being completed and being let out for pecuniary gain. The Court below, considering the fact that unauthorized construction in question, had already been raised to a

substantial level before the accused engineers of the MCD were posted in the concerned zones and that also for a very short duration.

7. The prosecution could not demonstrate that with respect to unauthorized construction, successive bookings was impermissible in terms of the Delhi Municipal Corporation Act (for short 'DMC Act'). Thus, the basic ingredient for constituting criminal misconduct, within the meaning Section 13(1)(d) of the PC Act, was not satisfied.

8. The learned Trial Court was further of the view that the sanction order for prosecution of the accused officials suffered from the vice of non application of mind as the officer granting sanction was not qualified to accord such sanction. Since one of the accused was a Group-A Officer, therefore, only the Corporation could have accorded sanction for prosecution. Taking into account the aforesaid factors and lack of evidence, all the accused persons including respondents were, as stated earlier, discharged. However, while concluding the Trial Court at para 151 observed as here under:

*“However, it is made clear that since from the material placed on record, prima facie, it appears that accused (A-4) and (A-5) raised unauthorized construction on agricultural land and violated the law, the State shall be at liberty to proceed against them, as per law, under the relevant provisions of the relevant law and also to find out any actual nexus between them and the then local police, revenue officers and other high ups, who might have enabled them to carry forward the menace of unauthorized construction.”*

9. Perhaps, taking clue from the aforesaid observations which gave the State the liberty to proceed against the respondents under relevant provisions of relevant law for raising unauthorized construction, the present application seeking reversal of the order of discharge as against the respondents has been preferred by the CBI.

10. In order to appreciate the facts in detail, it would be relevant to notice as to how the construction in question was continued and why, for a long time, such illegal structure was neither stopped from being further constructed nor demolished.

11. As per the revenue records, a piece of agricultural land was sold to respondent no.1 on 04.09.1996. Respondent no.2 and his wife, therefore, became directors of the company on 30.05.2003 after purchasing shares from the previous directors. Construction activity commenced on the said plot in the year 2003 sans any building plans. When the same was discerned, the junior engineer made proposals for booking the unauthorized construction and a FIR was registered on 01.08.2003. An approval was sought from the concerned authorities for demolition and sealing of the aforesaid construction. A proposal was initiated for commencing with proceedings under Section 345A of the Delhi Municipal Corporation Act for sealing. The proposal was approved at all the levels by the functionaries of the MCD. Pursuant to such proposal and its approval, a demolition-cum-sealing programme also was scheduled, but the property in question did not form part of that programme and schedule.

12. Subsequently, the same property was booked for the second time for unauthorized construction of the 2<sup>nd</sup> floor. A demolition order was again passed by Assistant Engineer, MCD on 05.02.2004. On the second occasion also, the said property did not form part of the demolition programme for the month of February-March 2004. A show cause notice was issued to respondent no.2 by one A.K. Singh, (IAS, Deputy Commissioner). Sealing order was passed on 11.03.2004.

13. The aforesaid property was booked for the third time on 16.02.2004, at the instance of Junior Engineer, wherein there was reference of earlier bookings. As what had happened on earlier occasions, on the third occasion also, a demolition order was passed but the property in question was left out of the demolition programme for the month of April-May, 2014.

14. On 05.03.2004, the Junior Engineer again initiated proposal for sealing under Section 345A of the Delhi Municipal Corporation Act, which proposal was forwarded by the Executive Engineer to the Superintendent Engineer (Buildings). The proposal was returned as being vague for want of details.

15. In any view of the matter, respondent no.2 was given a show cause notice on 18.05.2004. In the meantime, there was a change of guard and another officer took over as Deputy Commissioner who approved the proposal for sealing the premises on 10.09.2004. Action was directed to be taken against the erring officials but no action, even departmentally, was initiated against the officials of MCD.

16. Finally, the property was sealed and demolished on various dates.

17. The main object of booking unauthorized construction was to demolish the same and for taking other preventive measures, namely sealing of the property to prevent further illegal construction. It has been submitted by the CBI that the fact that booking was done on several occasions and corresponding proposals also were made for sealing of the property, and the property not having been demolished in successive demolition drives over a period of time merely indicated collusion of the officials (Engineers) of the MCD and the respondents.

18. After going through the materials on record, the Trial Court, however, was of the view that taking the totality of the circumstances there appears to be inadvertence or negligence only in not carrying out demolition or sealing of the property. In the absence of any material pointing towards conspiracy between the respondents and the officials of MCD, it would be a rather dangerous proposition to try the accused persons including respondents for the offence under the PC Act and other sections of the IPC.

19. From a perusal of the records, it appears that conjectural inferences have been made by the investigation agency. The records further reveal that special demolition programmes were fixed by the Deputy Commissioner, and the engineers of the MCD were not responsible for fixing such special demolition programmes. Whatever was required to be done at the level of the engineers of MCD, the

same was done and not once but on all occasions when illegal construction activity was noticed.

20. The Trial Court took note of the fact that Section 332 of the Delhi Municipal Corporation Act prohibited erection/construction of a building without sanction. The aforesaid provision per-se does not give any power to the engineers to take action for demolition themselves. The prosecution was required to be initiated by Deputy Commissioner in terms of Section 467 of the Delhi Municipal Corporation Act. This was not the responsibility of the engineers of MCD.

21. The investigation of the case was rather shoddy and despite the orders of the Court below, the gaze of investigation did not veer around the persons high and up in the administration, who were responsible for executing the demolition programme. The delay in actual sealing and demolition of the property in question could be because of myriad factors but in the absence of any tangible evidence with respect to the conspiracy between the respondents and officials of MCD, the accused persons, including the respondents, could not have put on trial. This Court laments *o tempora o mores* on the inaction on the part of senior officials of the MCD, as also the partisan approach of the investigating agency.

22. An illegal construction over an agricultural land would have normally attracted the provisions of Section 81 of the Delhi Land Reforms Act. However, no such action was taken by the concerned Sub-Divisional Magistrate. The Trial Court has rightly observed that



the stoppage of such unauthorized construction over the agricultural land was also the responsibility of the revenue department.

23. Thus, it appears that the engineers of the MCD have only been made the scapegoat in the entire episode.

24. The CBI raises a grievance that if the Trial Court was of the view that the respondents were responsible for the illegal/unauthorized construction on an agricultural land, there was no reason for them to have been discharged. If the Court below was of the view that the construction was illegal and which was primarily carried out by the respondents, the respondents ought to have been tried.

25. As has been stated earlier, the aforesaid contention has been raised only on the basis of a concluding observation of the Trial Court that the State would be at liberty to prosecute the respondents under relevant law for raising the illegal construction. What the Trial Court intended was that the respondents could be proceeded against, under the Delhi Land Reforms Act or under the MCD Act or under any law dealing with such intransigence, but definitely not under the provisions of the PC Act and Section 217 of the IPC.

26. Section 217 of the IPC provides for punishment to a public servant who disobeys the direction of law with the intent to save persons from punishment or property from forfeiture. In the absence of any material, bringing home or attracting the mischief of the PC Act and the aforesaid provision under the IPC, the respondents could not have even been prosecuted or tried for conspiring with other

government officials for the commission of offences under the aforesaid provisions.

27. What is absolutely intriguing is that the CBI has chosen to challenge the order of discharge of accused persons only qua the respondents who are private persons.

28. Had the Trial Court come to the finding that there are materials disclosing the commission of offence under Section 217 of the IPC and Prevention of Corruption Act, 1998, there would have been no justification for discharging the respondents, more so when the Trial Court was of definite opinion that the construction activity resorted to by the respondents was unauthorized and illegal. What the Trial Court, it is reiterated, intended that the respondents could not have been prosecuted for the aforesaid offences, but they could be proceeded against under other Acts.

29. Thus the grievance of the CBI is unfounded and misconceived.

30. The petition is dismissed for the aforesaid reasons.

**Crl.M.A No.19888/2012**

1. In view of the petition having been dismissed, no orders are required to be passed in the instant application.

2. Dismissed as infructuous.

**SEPTEMBER 30, 2015**  
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**ASHUTOSH KUMAR, J**